

REMARKS

The Amendments

Claim 1 is amended to recite further inclusion of a cosmetic active ingredient. See, e.g., previous claim 11 and the disclosure at page 10, para. [0038], for support. Additional dependent claims were also added; see, e.g., paras. [0012], [0026], [0029], [0034], [0035], and [0040-0043] for support.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection under 35 U.S.C. §112, first paragraph

The rejection under 35 U.S.C. §112, first paragraph, is rendered moot by the amendment since the proviso is no longer in the claims.

The Obviousness-type Double Patenting Rejection

The obviousness-type double patenting rejection of claims 12, 16 and 18 over the claims of U.S. Patent No. 6,517,628 (Pfaff) is rendered moot by the above amendments. The rejected claims were canceled. Pfaff also does not claim compositions containing a cosmetic active ingredient as recited in the instant claims.

The Rejection under 35 U.S.C. §103 over Anselmann

The rejection of claims 1-10 under 35 U.S.C. §103, as being obvious from Anselmann (WO 02/090488), is respectfully traversed.

Anselmann fails to teach or suggest compositions which particularly combine applicants' components A and B of claim 1 with a cosmetic active ingredient, such as an insect repellant, an inorganic UV filter, an anti-ageing active ingredient, a vitamin, a self-tanning agent, bisabolol, LPO, VTA, ectoin, hydroxyectoin, emblica, allantoin or a bioflavonoid (see also claim 20). Although Anselmann briefly mentions use of its pigments in cosmetic compositions, there is no disclosure of any particular cosmetic composition and certainly no suggestion of combining any cosmetic active ingredient.

Further, Anselmann fails to direct one of ordinary skill in the art to the particular combination of a pigment mixture containing a glass flake-based pigment and a flake-form, needle-shaped, spherical or crystalline colorant or filler, according to applicants' claim 1. Anselmann merely generically discusses the option of mixing its glass flake-based pigments with other pigments (see, e.g., paragraph at pages 6-7), the reference does not direct one of ordinary skill in the art to any specific mixture, i.e., a specific one of the glass pigments with a specific one of the other pigments.

At least for the above reasons, Anselmann does not render the instant claims obvious and the rejection under 35 U.S.C. §103 should be withdrawn.

The Rejection under 35 U.S.C. §103 over Ambrosius

The rejection of claims 1-11 under 35 U.S.C. §103, as being obvious over Ambrosius (WO 03/006558), is respectfully traversed.

Ambrosius fails to teach or suggest compositions which particularly combine applicants' components A and B of claim 1 with a cosmetic active ingredient, such as an insect repellant, an inorganic UV filter, an anti-ageing active ingredient, a vitamin, a self-tanning agent, bisabolol, LPO, VTA, ectoin, hydroxyectoin, emblica, allantoin or a bioflavonoid (see also claim 20). Although Anselmann briefly mentions use of its pigments in cosmetic compositions, there is no disclosure or suggestion of combining any cosmetic active ingredient.

Furthermore, as with Anselmann, the disclosure of Ambrosius in the paragraph bridging pages 14-15 does not describe any specific embodiment meeting the combination of the instant claims nor suggesting this particular combination.

At least for the above reasons, Ambrosius does not render the instant claims obvious to one of ordinary skill in the art and the rejection under 35 U.S.C. §103 should be withdrawn.

The Rejection under 35 U.S.C. §103 over Pfaff

The rejection of claims 1-19 under 35 U.S.C. §103, as being obvious over Pfaff (U.S. Patent No. 6,517,628) is respectfully traversed.

Pfaff fails to teach or suggest compositions which particularly combine applicants' components A and B of claim 1 with a cosmetic active ingredient, such as an insect repellant, an inorganic UV filter, an anti-ageing active ingredient, a vitamin, a self-tanning agent,

bisabolol, LPO, VTA, ectoin, hydroxyectoin, emblica, allantoin or a bioflavonoid (see also claim 20). Although Pfaff briefly mentions use of its pigments in cosmetic compositions, there is no disclosure or suggestion of combining any cosmetic active ingredient.

Pfaff provides a broad generic disclosure of pigments for its component A at col. 1, lines 38-44. The component A pigments disclosed for the mixture in Pfaff are generally disclosed as based on any of mica, SiO₂ flakes, glass flakes, Al₂O₃ flakes or polymer flakes. In the only specific embodiments disclosed in Pfaff, the component A pigment is based on mica or SiO₂; see Examples 1-7. Pfaff fails to disclose an embodiment wherein a pigment mixture includes an effect pigment based on glass flakes. While Pfaff's broad generic teachings may encompass use of such a pigment, a mere broad generic teaching does not necessarily support a finding of obviousness. See, e.g., In re Jones, 21 USPQ 2d 1941 (Fed. Cir. 1992), and In re Baird, 29 USPQ2d 1550 (Fed. Cir. 1994). Pfaff provides no direction to one of ordinary skill in the art to select a particular glass flake pigment from among the many possible base materials for its component A pigments. Further, Pfaff, instead, directs one of ordinary skill in the art to select mica or SiO₂ based pigments for its component A. Thus, Pfaff fails to provide the requisite motivation directing one of ordinary skill in the art to an embodiment according to applicants' claims. The failure of Pfaff to direct selection of a cosmetic active ingredient makes an even further distinction of the claimed invention. In the absence of any motivation in Pfaff to make the particular combination of components of the instant claims, the 35 U.S.C. §103 rejection should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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Attorney Docket No.: MERCK-2867

Date: June 20, 2007

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